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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 09/751,397 | 01/02/2001 | Lori Ann Wilson | 67,500-353 | 7520 |
| 27305 | 7590 | 03/02/2004 | EXAMINER | |
| HOWARD & HOWARD ATTORNEYS, P.C. THE PINEHURST OFFICE CENTER, SUITE #101 39400 WOODWARD AVENUE BLOOMFIELD HILLS, MI 48304-5151 | | | | TRAN LIEN, THUY |
| | | ART UNIT | | PAPER NUMBER |
| | | 1761 | | |

DATE MAILED: 03/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------------|------------------------|--------------------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 09/751,397 | WILSON ET AL. <i>(C)</i> |
| | Examiner | Art Unit |
| | Lien T Tran | 1761 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 28 November 2003.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-12,34 and 35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-12 and 34-35 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____.
- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

1. Claims 1-12, 34-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alderman in view of Nakamura et al (Production of waxy (amylose free) wheats) and the book " Wheat Chemistry and Technology).

Alderman discloses cooked- puffed waxy cereal food. The grains used are waxy varieties of the cereal grains such as corn, rice, sorghum, barley, millet etc... The whole grain may be processed in the form of whole kernels or fractions thereof such as grits. The grains are cooked and then oven puffed. The grains are formed into ready-to-eat cereal foods of the breakfast cereal type. The grains can be pearled. (See entire reference)

Alderman does not disclose the grain is waxy wheat and coating the grains with an edible coating.

Nakamura et al disclose the production of waxy wheats. (See abstract)

The book shows that the common wheat " *Triticum aestivum*" include both soft and hard wheat and the protein content of the soft and hard wheat ranges from 9-15%.

It would have been obvious to one skilled in the art at the time of the invention to use any waxy grains that are available. Nakamura et al show that waxy wheats are known. Thus, it would have been obvious to use waxy wheat to produce the waxy cooked cereal grains disclosed by Alderman. When waxy wheat is used, it is obvious the grains will have the allele and the amylose content claimed. Nakamura et al do not disclose the protein content of the wheat; however, they disclose common wheat is used. Common wheat includes both the soft and hard kind; as shown by the textbook, the protein ranges from 9-15%. Thus, the protein claimed is commonly found in wheat

and would be expected to find in the wheat product of Nakamura et al because the making of the waxy variety does not alter the protein content. Furthermore, the specification does not disclose any step to alter the protein content of the wheat product; thus, the protein content is that commonly found in wheat product. It would have been obvious to put an edible coating such as sucrose, corn syrup solid on the grains to enhance the taste and flavor of the grains. This is well known in the cereal technology. It would have been obvious to pearl the wheat if it is desired to remove the outer layers. Since the cereal product is puffed and it is a ready to eat cereal, the product is buoyant because cereal floats in liquid. The Alderman product is dried so it expect the product is storage stable because ready-to-eat cereal has shelf life exceeding one year.

In the response filed Nov. 28, 2003, applicant argues Nakamura et al fails to disclose the waxy wheat having the protein content of claim 1. This argument is not persuasive. . Nakamura et al do not disclose the protein content of the wheat; however, they disclose common wheat is used. Common wheat includes both the soft and hard kind; as shown by the textbook, the protein ranges from 9-15%. Thus, the protein claimed is commonly found in wheat and would be expected to find in the wheat product of Nakamura et al because the making of the waxy variety does not alter the protein content. Furthermore, the specification does not disclose any step to alter the protein content of the wheat product; thus, the protein content is one that is commonly found in wheat product.

Applicant's arguments filed Nov. 28, 2003 have been fully considered but they are not persuasive.

The change in the rejection is necessitated by amendment.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Tuesday, Wednesday and Friday.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

February 11, 2004

Lien Tran
LIEN TRAN
PRIMARY EXAMINER
Group 1700